SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT HAMILTON

[2024] FAI 10

HAM-B436-22

DETERMINATION

BY

SHERIFF JOHN SPEIR

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC (SCOTLAND) ACT 2016

into the death of

RENE HOWIESON

Hamilton, 29 February 2024

Findings

The Sheriff having considered the information presented at the Fatal Accident Inquiry into the death of Rene Howieson, born 18 December 1980, determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 ("the Act") that:

1. In terms of section 26(2)(a) (when and where the death occurred):

The death of occurred at 5.33pm on 18 May 2020 within the Adult Critical Care Unit, Wishaw General Hospital, Wishaw.

2. In terms of section 26(2)(b) (where and when any accident resulting in the death occurred):

Mr Howieson's death did not result from an accident.

3. In terms of section 26(2)(c) (cause or causes of death):

Mr Howieson's death was caused by: Ia Multiple organ failure due to IIb Serotonin syndrome (clinical diagnosis).

4. In terms of section 26(2)(d) (cause or causes of any accident resulting in death):

Mr Howieson's death did not result from an accident.

5. In terms of section 26(2)(e) (the taking of precautions):

There are no precautions which could reasonably have been taken and which, had they been taken, might realistically have resulted in Mr Howieson's death being avoided.

6. In terms of section 26(2)(f) (defects in any system of working):

There were no defects in any system of working which contributed to the death.

7. In terms of section 26(2) (g) (any other facts relevant to the circumstances of the death):

There are no other facts relevant to the circumstances of Mr Howieson's death

Recommendations

The sheriff, having considered the information presented at the inquiry, makes no recommendations in terms of section 26(1) (b) of the 2016 Act

NOTE

Representation

Procurator Fiscal: A. Ali, Procurator Fiscal Depute;

Lanarkshire Health Board: K.Trail, solicitor, NHS Scotland;

Scottish Prison Service: C. Johnstone, solicitor, Anderson Strathern LLP;

Scottish Prison Officers Association Scotland, S. McIlwham, solicitor, Thompsons Solicitors.

Introduction

[1] This is an inquiry into the death of Mr Rene Howieson who died on 18 May 2020 within Wishaw General Hospital. At the time of his death Mr Howieson was 40 years old. He was serving a term of life imprisonment and immediately prior to his transfer to Wishaw General Hospital was a prisoner within HMP Shotts. As Mr Howieson was in legal custody at the time of his death this is a mandatory inquiry in terms of section 2(4) (a) of the 2016 Act.

[2] The inquiry was initiated by the requisite statutory notice given by the Procurator Fiscal for the District of Hamilton dated 23 June 2022. The participants to the

enquiry were Lanarkshire Health Board, Scottish Prison Service and the Scottish Prison Officers Association Scotland.

[3] After sundry initial procedure the inquiry was heard over three days between 2 June and 21 December 2023. The inquiry was conducted in person save for the hearing on submissions which was by remote link using the Webex platform. No family sought to participate but a composite statement prepared by various family members was read out at the Inquiry on their behalf by Mr Ali, Procurator Fiscal Depute.

[4] A substantial body of evidence was agreed and affidavits from the following witnesses were admitted in evidence: (i) Mitchell Baillie, acting Head of Operations, Scottish Prison Service ("SPS"); Fiona Cruickshanks, Head of Operations and Public Protection, SPS; Dr Phil Lucie, Consultant in Anaesthetics and Critical Care and clinical lead for the Critical Care Unit at Wishaw General Hospital. In addition, Ms Cruickshanks and Dr Lucie also gave parole evidence.

[5] Mr Baillie's affidavit set out the various methods by which illicit substances can enter a prison and the measures taken by SPS to combat that; Ms Cruickshank's affidavit and oral evidence addressed the SPS policies and procedures in relation to substance testing within the SPS estate; and Dr Lucie' affidavit and oral evidence covered the circumstances of the admission of Mr Howieson to Wishaw General Hospital, his condition and treatment thereafter until his expiration and how information is assessed and used by medical staff when a patient is admitted to hospital with a suspected drug related issue.

[6] The circumstances surrounding Mr Howieson's death were not in dispute and the evidence before the inquiry was not contentious. I found those witnesses from whom I heard to be both credible and reliable. That being so, I do not record here all that was said in evidence. Instead, I provide, from paragraph [7] onwards, a summary of the relevant circumstances as disclosed by the evidence.

Mr Howieson's circumstances

[7] At the time of his death Mr Howieson was serving a life prison sentence in respect of a conviction for assault and murder. He was sentenced by the High of Justiciary on 18 January 2018. The punishment part of said sentence was 14 years and 2 months backdated to 5 April 2017 the expiry date of which was 4 June 2031. The earliest that Mr Howieson would have been eligible for consideration for release by the Parole Board was from 4 June 2032. Mr Howieson's sentence was served initially at HMP Edinburgh and thereafter HMP Low Moss until his final transfer to HMP Shotts on 20 March 2018.

[8] On admission to HMP Shotts Mr Howieson was assessed as no apparent risk of suicide and having no thoughts of self-harm. He received regular input and review from mental health services whilst in custody, particularly for depression, anxiety and low mood. He also had a longstanding history of alcohol and substance misuse for which he received regular input from addictions services at the prison. As a long-term drug user he was prescribed a daily methadone dose, which varied from time to time. He was warned of the risks of taking illicit substances such as benzodiazepines with

methadone. In September 2018 he was caught with 'hooch' (homemade alcohol) in his cell. He admitted using 'spice' (a synthetic cannabinoid) and drinking as much 'hooch' as possible. He was advised of the potential lethal consequences of this conduct by his key worker and an Addictions Consultant.

[9] On 25 July 2019 Mr Howieson attended for an addictions appointment and displayed signs of opiate intoxication. He admitted he had begun abusing unprescribed co-codamol weeks earlier but denied using any other opiates other than methadone. He was given harm reduction advice and his methadone dose increased gradually returning the dosage to 120mls. At his final review on 21 August 2019 it was noted there was to be no further increase in methadone.

[10] Following his conviction in January 2018 Mr Howieson was recorded as requiring a "high" level of supervision under the Prisoner Supervision System. That was subsequently reduced to ''low" in February 2020 as he was noted to be coping much better with prison and had had no episodes of indiscipline since the previous review. In the months prior to his death Mr Howieson appeared to have settled into the prison environment, there were no reports of violent or disruptive behaviour, there was no intelligence relating to him being involved in the sale of illicit items and responsivity reports were all positive. He had also completed a First Aid course and was passing through the National Induction Centre with no negative reports. He was subject to drug testing twice whilst in prison, the most recent test being on 18 October 2018 after he was suspected of being under the influence of an illicit substance a few days earlier. Both tests returned negative results.

[11] On 1 November 2011, the responsibility for the provision of healthcare to prisoners transferred from the Scottish Prison Service to the NHS. Since then, individual regional NHS health boards have been responsible for the delivery of health care services, including mental health, within prisons in Scotland which fall within their geographical ambit for the provision of medical care. NHS Lanarkshire were responsible for the provision of healthcare, including mental health, to Mr Howieson.

Circumstances of death

[12] On 9 May 2020 at approximately 1340 hours, Mr Howieson was discovered lying on the floor of his cell in an incoherent state. He appeared to be having a seizure. Prison staff suspected he had taken an illicit substance. A "code blue" was called following which a prison nurse attended at Mr Howieson's cell to provide medical assistance. It was noted that there was vomit on the Mr Howieson's bed pillow. While lying on the floor resting on his arm Mr Howieson appeared to be hallucinating and trying to make contact with something under his bed but was just touching air. He was noted to have slurred speech and pinpoint pupils. He was unable to sit up himself without support. Although he displayed occasional jerking movements the nurse was satisfied he was not having a seizure. He was administered oxygen and naloxone, the latter having minimal impact. The nurse determined that he required to be conveyed to hospital and an emergency ambulance was requested. Paramedics arrived at the prison at approximately 1505 hours and left with Mr Howieson for Wishaw General Hospital ("the hospital") at approximately 1515 hours.

[13] Mr Howieson was first seen in the accident and emergency department of the hospital. On arrival he was extremely agitated and combative. He had a temperature of 39 degrees and evidence of clonus in keeping with Serotonin syndrome. He was found to display clinical features of serotonin syndrome. He was treated and managed for serotonin syndrome from admission onwards. He required urgent intubation and transfer to the Adult Critical Care Unit for ongoing care and treatment. After a few days Mr Howieson's temperature settled and his condition looked to be improving. A clinical decision was therefore made to recommence some of his usual medications (including methadone, fluoxetine and chlorpromazine) and thereafter to take him off the ventilator. Mr Howieson was, however, unable to cope without ventilation and he required to be re-intubated and re-sedated. Thereafter his temperature became elevated again and in consequence his medications were all stopped again.

[14] On 18 May 2020 Mr Howieson became acutely unwell with a distended abdomen and worsening hypertension. An urgent CT scan was performed which was suggestive of extensive small bowel ischaemia/infarction. He was transferred to the operating theatre for a laparotomy at approximately 1400. This revealed extensive small bowel ischaemia with impending perforation. This was deemed to be unsurvivable due to the extensive nature of it and the patient's poor condition. He was returned to the Adult Critical Care Unit and his family were contacted to attend. Mr Howieson's life was pronounced extinct at 1733 hours later on that day.

[15] It would have made no difference to Mr Howieson's care in hospital if the medical staff had been informed that there was a possibility that he had ingested

buprenorphine. He did not behave clinically like an opioid toxicity associated with that drug. His presentation was more consistent with having ingested amphetamines, MDMA or ‘spice’. In any event, the designated treatment where buprenorphine had been ingested was the administration of naloxone and this had already been administered to Mr Howieson shortly after he had been found in his cell and prior to his admission to hospital. Had the ingested substance been buprenorphine some improvement in his symptoms would have been expected following the naloxone treatment but that did not happen.

The cause of death

[16] A post mortem examination was undertaken by Dr Julia Bell, Consultant Forensic Pathologist, Queen Elizabeth University Hospital, Glasgow on 1 June 2020. Dr Bell concluded that the cause of death was: 1a: Multiple organ failure due to 1b: Serotonin syndrome (clinical diagnosis). Blood samples were analysed revealing the presence of Methadone, Fluoxetine, Norfluoxetine, Amitriptyline, Chlorpromazine and Lorazepam.

[17] In the conclusion section of her report Dr Bell *inter alia* noted the following:

> “When this man was initially admitted to hospital, he was diagnosed with serotonin syndrome which is a condition that can develop following the use of certain drugs and the symptoms can range from mild, including high blood pressure and a fast heart rate, to severe when the body temperature increases significantly and there is agitation, sweating and increased reflexes along with muscle breakdown. This man would appear to have developed a severe manifestation of the syndrome, which required him to be ventilated. It is not a condition that can be diagnosed at post-mortem.

> In terms of the drugs that can induce serotonin syndrome, it is typically caused by the use of serotonergic drugs, examples of which are Fluoxetine (a selective serotonin reuptake inhibitor) and amitriptyline (a tricyclic antidepressant). At high levels, these drugs alone can precipitate the syndrome but often a combination of drugs are involved. Furthermore, opioids such as methadone and buprenorphine can also be associated with its development…
>
> In summary, based on the clinical history provided coupled with the post mortem findings, it would be consistent with this man's death having been due to multiple organ failure caused by serotonin syndrome but it was not possible to confirm which drugs were involved."

Investigations by Police and Scottish Prison Service

[18] On 9 May 2020 , and while the nurse was attending to Mr Howieson, prison staff carried out a search of his cell and located a package underneath the bed containing three individual packages wrapped in latex. These were placed in a production bag. On 11 May 2020, prison staff examined and tested one of these wraps. It was noted to contain a white powder. That powder was swabbed and tested on a Rapiscan Ionscan Itemiser device ("Rapiscan Itemiser"). It tested positive for Buprenorphine. Had Mr Howieson survived he would have been the subject of a discipline report for having an illicit substance in his cell. The result of the test was not shared with Wishaw General Hospital.

[19] Subsequent to Mr Howieson's death, on 19 May 2020 officers from Police Scotland attended at the prison alongside a crime scene examiner. They conducted a systematic search of the cell formerly occupied by Mr Howieson. The cell had been locked and secured since 9 May 2020. That search disclosed the presence of one amitriptyline tablet, prescribed to another prisoner, located in a safe in the cell. Inquiries

to establish the source of the illicit drugs found in the deceased's cell on 9 and 19 May 2020, being the Buprenorphine and thereafter Amitriptyline, respectively, were negative.

Illicit drugs within HMP Shotts – methods of entry, detection and prevention

[20] The presence and consumption of illicit drugs in prison establishments such as HMP Shotts are recognised issues by SPS. There are numerous known methods by which such substances can enter HMP Shotts and steps have been developed to combat these. The principal methods of entry and the steps to combat them may very briefly be summarised as follows:

(1) Drugs thrown over walls/fences for collection during recreation breaks: internal and external patrols carried out at all hours of day the night; CCTV camera surveillance of inside and outside perimeter; and routine searches of prisoners who use the external areas for exercise.

(2) Mail impregnated with illicit substances for extraction: principal items are withheld from prisoners but photocopies are made in their presence and passed to them; thereafter safe disposal of shredded material suspected to be contaminated takes place after testing with the Rapiscan Itemiser (see separate section below).

(3) Deliveries of necessary prison supplies and materials: mandatory passage through main vehicle lock for searching with CCTV monitoring taking place throughout.

(4) Prison visits: physical and personal belongings scanning of visitors;

prisoner rubdown; targeted or random body search of prisoner at end of visit; and continual CCTV monitoring during visiting session.

(5) Prisoner movement: full body searches of prisoners on leaving and entering prison.

(6) Staff corruption: intelligence, background checks, and x-rays and random searches; support in place for staff members directly and indirectly targeted as potentially vulnerable to corruption.

(7) Misuse of prescribed medication: supervision of the consumption of medication; removal of prisoner from prescribed medication if discovered to be swallowing and thereafter regurgitating the medication for distribution so long as such removal does not result in a significant healthcare risk; and continual observation of the residential halls within a prison to prevent the movement of prescription medication between prisoners.

[21] In relation to all of the foregoing and generally SPS collaborate with Police Scotland to gather and act on intelligence in relation to the trafficking of illicit substance into and within prison establishments. A further resource is the National Tactical Search Unit that, although not based within HMP Shotts, attends frequently and deploys trained dogs to check staff, visitors, deliveries, mail and parcels.

[22] Further, and in addition, random prisoner cell searches take place a minimum of three times a year together with targeted additional searches based on intelligence.

[23] Ultimately the effectiveness of all of the measures deployed to combat the problem of illicit drug entry and consumption is a function of and dependent upon the

proportionate use of resources set against the determination of drug smuggling operations.

The use and purpose of the Rapiscan Itemiser

[24] The Rapiscan Itemiser is a drug detection scanner used by SPS across the prison estate. As such it is only one of a number of measures used by SPS to combat the issue of illicit drug consumption in prison establishments. There is no uniform provision of said devices within the prison estate. Larger establishments like HMP Shotts have two devices whereas small establishments only have one.

[25] The Rapiscan Itemiser is specifically used to test mail that comes in to determine whether it has been laced with illicit drugs. It is also used to test any suspicious substances found by prison staff. It is used as a security aid for the prison establishments and the results are not used from a healthcare perspective.

[26] The Rapiscan Itemiser does not test to a laboratory standard and the results produced by it may not always be accurate. SPS use the Rapiscan Itemiser in collaboration with Dundee University ("the University") as part of a research project being undertaken by the latter to identify drug prevalence within prison establishments. SPS send samples obtained from within the prison to the University. These samples are then laboratory tested against the results obtained by the machine. This data sharing is then added to a "library" of codes prepared and updated by the University which the trained prison staff use to identify substances if found. Not all substances can be

identified and a significant proportion of positive results have in the past been shown to be false positives. A recent sample showed this to be in excess of 25%.

[27] The device can only be operated by staff who have been trained in its use. It is not a fulltime role and the timescales for testing of substances discovered depends on the availability of trained staff. Since Mr Howieson's death more staff within HMP Shotts have been trained in its use.

[28] There is no operational reason in principle why the results of any testing by the Rapiscan Itemiser could not be shared with any healthcare provider in circumstances where a drug overdose or other similar condition was suspected. Ms Cruickshanks' primary concern was the utility of such intelligence given the number of false positive results obtained. Other concerns related to the availability of machines and staff trained to operate them. There might also be a delay in the location and testing of substances in certain cases where guidance and/or approval to search and test was awaited from Police Scotland. That was not an issue in Mr Howieson's case as it was only on his death that Police Scotland became involved (refer paragraph [19]).

The issues for the inquiry

[29] Against this background the issues for the inquiry ultimately focused on the following issues and which were addressed in the submissions of the participants to a greater or lesser extent: (1) whether Mr Howieson's death might have been prevented by the taking of any reasonable precautions; (2) whether any defect in the system

contributed to his death; and (3) whether any other facts are relevant to the circumstance of his death.

Taking of reasonable precautions

[30] I have determined on the evidence that there are no precautions which could reasonably have been taken and which, had they been taken, might realistically have resulted in Mr Howieson's death being avoided. Prior to his death Mr Howieson had been subject to regular assessment by health professionals. There were no reasonable precautions that could have been acted upon to prevent his ingestion of whatever substance resulted in his death through developing serotonin syndrome. Indeed, he had received warnings as to the risk of taking illicit substances with his prescribed methadone. SPS dedicate significant resources to prevent the entry and then the detection of illicit drugs within prisons. However, once such substances are present within a prison it necessarily devolves in the main to the individual to act in a way consistent with and not detrimental to their own health and well-being. Tragically, it would appear that Mr Howieson failed to act with such caution with the result that he experienced a fatal reaction to whatever he consumed in addition to his methadone prescription.

System of work

[31] Similar considerations arise in relation to this issue. On the evidence, no issue arose in relation to any defect in a system of working due to the unpreventable nature of Mr Howieson's death.

Any other facts relevant to the circumstances of death

[32] The Crown have submitted that where substances are located within the cell of a prisoner who has been transferred to hospital under suspicion of having ingested illicit substances, there should be early testing of said substances and the results thereof shared with relevant healthcare professionals so that care plans and treatment can be adapted accordingly. This submission rests on the possibility of testing suspected substances with Rapiscan Itemiser. It is accepted that had the results obtained on 11 May 2020 been shared with the hospital it would have made no difference to the treatment or outcome for Mr Howieson. It was submitted, however, that there remained a hypothetical possibility that such information could be useful in some cases to assist with the effective care and treatment of a patient albeit such information could only be considered alongside the overall clinical picture.

[33] Although I make no criticism of the Crown for raising this hypothetical issue, I do not accept the submission made in this regard. Even if there had been immediate testing of what was subsequently determined to be buprenorphine, and the hospital informed of that, this is not relevant to the circumstances of Mr Howieson's death. Nor was the non-disclosure of the testing that took place on 11 May 2020. Sharing of that

information would have made no difference to the treatment or outcome for Mr Howieson. In any event Mr Howieson's presentation on admission to hospital was not clinically akin to an opioid toxicity consistent with having taken buprenorphine but rather as (Dr Lucie suspected) the ingestion of amphetamines, MDMA or "spice". On the basis of the evidence therefore I do not consider that the test results obtained from the Rapiscan Itemiser and the non-disclosure thereof to Wishaw General Hospital are facts relevant to the circumstances of Mr Howieson's death.

[34] Neither do I consider there to be merit in making a recommendation along the lines suggested by the Crown. To give content to such a recommendation would be to require SPS to implement a protocol not presently in place in relation to the purpose and use of Rapiscan Itemisers. Said machines are primarily security tools to identify what drugs are in circulation at different prison establishments. There was no evidence before the Inquiry that resources could be re-deployed to carry out the form of testing in the circumstances and within the timescale postulated by the Crown. Indeed, I accept the evidence of Ms Cruickshanks that resources were already limited. There is also the further potential issue of the need to resolve any conflict of competencies or priorities between SPS staff and Police Scotland before substances in a cell could be tested. Such testing may have happened in the present case prior to police involvement but the Inquiry heard no evidence against which any recommendation of universal application in every case along the lines suggested by the Crown could be considered.

[35] Further, based on the evidence from Dr Lucie, I am not persuaded that even if such recommendation could be given effect to by SPS by the re-allocation of existing

resources, that there is a real or likely possibility that it could affect the outcome in any actual case. I do not consider it appropriate or useful in the context of this Inquiry to speculate on hypothetical scenarios. I was, in any event, satisfied by Ms Cruickshanks' assurance that where a prisoner is conveyed to hospital from an establishment for ingesting a substance, where possible, details are provided to the hospital including the colour and form of it. Lastly, as Dr Lucie indicated, there is no singular official guidance on drug testing of patients admitted to hospital, but rather, the hospital relies on the symptoms in front of them and the information provided. Even then that information would only ever be acted on if it were in accordance with the clinical picture.

Conclusion

[36] Mr Howieson's death was unforeseen and unavoidable. As I have set out I have found no precautions which had they been taken might realistically have prevented Mr Howieson's death and I have found no defect in any system of working which contributed to his death. I have no recommendations to make.

[37] I am grateful to all those who assisted the inquiry and I extend my condolences to Mr Howieson's family and all those affected by his death.